

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

UTILITY CONSUMERS' ACTION NETWORK  
(UCAN),

Complainant,

v.

SPRINT TELEPHONY PCS, L.P. (U-3064),  
WIRELESSCO, L.P. doing business as Sprint PCS  
(U-3062),

Defendants.

Case 05-07-021  
(Filed July 22, 2005)

**OPINION APPROVING SETTLEMENT**

**I. Summary**

This decision approves a Settlement Agreement between the Utility Consumers' Action Network (UCAN) and Sprint Telephony PCS, LLC, (Sprint). Under the Settlement Agreement, attached hereto as Appendix A, Sprint has agreed to not bill customers for text message advertisements and to provide refunds to customers who were billed for such advertisements.

**II. Background**

UCAN alleged that defendants were violating California law and Commission regulations by charging customers for text message advertisements.<sup>1</sup> At the prehearing conference on March 9, 2006, the parties reported to the assigned Administrative Law Judge (ALJ) that they had reached a settlement in principle.

The parties reduced the settlement terms to writing and filed the Settlement Agreement, with a motion seeking Commission approval, on August 15, 2006.

**III. Description of the Settlement Agreement**

The Settlement Agreement provides that Sprint will not charge its text message service customers for Sprint advertisements sent to the customers. Sprint further commits to identify all customers that were previously charged for such advertisements and to credit the customers' accounts for the full amounts of any such charges. Sprint further agrees that it will implement systems, processes, and employee training as necessary to ensure that text message customers are not charged for advertisements in the future. To the extent UCAN discovers what it believes are violations of the Settlement Agreement, the parties

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<sup>1</sup> Along with this complaint, UCAN simultaneously filed a complaint against Cingular Wireless which also alleged violations of telecommunications billing law and regulations. Although these proceedings were not consolidated, they were processed in close coordination due to the similarity of facts and applicable law. This proceeding awaited litigation and resolution of a motion to dismiss in the Cingular proceeding, which the Commission resolved in Decision 06-02-012 by clarifying the requirement for subscriber authorization prior to billing.

have agreed that UCAN will notify Sprint of the alleged breach and allow Sprint an opportunity to cure prior to filing a complaint with this Commission.

#### **IV. Approval of Parties' Settlement Agreement**

Because the parties have agreed to resolve the proceeding by means of a settlement, the case should be analyzed pursuant to the Commission's settlement rules. In order for a settlement to be approved by the Commission, the settlement must be: (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest. (Commission Rule 51.1(e).) Each element is present here.

##### **A. Reasonableness in Light of the Whole Record**

The parties contend the Settlement Agreement is reasonable in light of the whole record because it fully addresses the issues raised by UCAN. Sprint will not bill text message customers for advertisements, and will refund all such charges that have been imposed on customers.

We agree that the Settlement Agreement is reasonable in light of the record.

##### **B. Consistent With the Law**

The Settlement Agreement is consistent with the law. Pursuant to Pub. Util. Code § 2890(a), Sprint may only bill charges that have been authorized by the subscriber. Consistent with this requirement, the Settlement Agreement prohibits Sprint from billing for advertisements. We find that the Settlement Agreement is consistent with the law.

##### **C. In the Public Interest**

Finally, we find that the Settlement Agreement is in the public interest. The Settlement Agreement compensates text message customers for advertising

charges, and protects them against future similar charges. The operational improvements implemented by Sprint will ensure that customers are not billed for advertising.

The public interest is also served by approval of the Settlement Agreement as an efficient means to resolve this dispute, and the agreement provides a mechanism for promptly resolving similar disputes in the future.

For the foregoing reasons, the Commission finds that the Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The Settlement Agreement should therefore be approved.

#### **V. Categorization and Need for Hearings**

We originally categorized this proceeding as adjudicatory and determined that hearings were necessary. The motion for approval of the Settlement Agreement was filed before hearings, and no hearings were held. In light of our approval of the Settlement Agreement, a hearing is not necessary.

#### **VI. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

#### **VII. Assignment of Proceeding**

Dian M. Grueneich is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. All parties have agreed to the Settlement Agreement.

2. The Settlement Agreement provides that Sprint will not charge text message customers for Sprint advertisements and customers that have been charged will receive refunds.

3. The Settlement Agreement requires Sprint to implement operational improvements designed to ensure that customers are not charged for advertising in the future.

**Conclusions of Law**

1. The Settlement Agreement in this proceeding is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. Hearings are not necessary.

3. The Settlement Agreement should be approved, effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The Settlement Agreement appended to this decision as Appendix A and signed by all parties is approved.

2. No hearing was necessary for this proceeding.

3. Case 05-07-021 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.